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10/616,733	07/10/2003	Raj K. Mangla	47097-00958USPR	9491
28763	7590	08/31/2010	EXAMINER	
BAKER BOTTS L.L.P.			HICKS, ROBERT J	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DLNYDocket@bakerbotts.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/616,733	<b>Applicant(s)</b> MANGLA ET AL.	
	<b>Examiner</b> ROBERT J. HICKS	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-96 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 and 41-69 is/are allowed.
- 6) ☒ Claim(s) 7-40, 70-96 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/26/2004, 7/14/2006</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION - *Reissue Application***

***Information Disclosure Statement***

1. The information disclosure statement filed July 14, 2006 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because of the following. Appropriate correction is required.

- a. The US Design Patent 361,935 is listed as being to Krupa and with a patent date of 8/8/1995. This is incorrect, as the design patent is correctly to Johnson with the patent date of 9/5/1995.
- b. The BE 645,683 patent with patented date of 3/25/1964 has not been supplied. The foreign patent supplied is BE 654,683 patented 2/15/1965.
- c. The JP 60-84519 patent with patented date 5/13/1985 in the IDS has not been supplied. The foreign patent supplied was JP 6-84519 patented 3/25/1994.
- d. The GB 2,044,226 patent in the IDS has not been supplied. See 37 CFR 1.98(b)(2).

2. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

***Oath/Declaration***

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration. There are changes to the address for inventor Mark Erickson in the oath filed March 5, 2004. See 37 CFR 1.52(c).

***Drawings***

4. The drawings filed 7/10/2003 are objected to for failing to comply with 37 CFR 1.173(a)(1)(2) which requires applicant to submit the entire specification, including a clean copy of each drawing sheet from the printed patent.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**6. Claims 7-40 and 96 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Regarding Amended Claim 7 and Claim 96, the claims recite the limitation "... (the) said outer flange forming at least one handle segment, each of said handle segments ...." There is insufficient antecedent basis for this limitation in the claim, because the claim states at least one handle segment, meaning there must be at least

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one and might only be one handle segment. Claims 8-40 are rejected as being dependent upon rejected base claim 7.

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**8. Claims 7-9 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6-8 of U.S. Patent No. 6,349,847 (Mangla et al.) [Mangla '847].**

Regarding Claims 7-9, although the conflicting claims are not identical, they are not patentably distinct from each other because Mangla '847 – a vented container with integral handles - discloses a continuous wall [Mangla '847, 22 and 24, Fig. 1] extending from the bottom [Mangla '847, 20] and encompassing said bottom, with a base rim [Mangla '847, 26] encompassing an upper edge of said continuous wall [Mangla '847, Fig. 3, Col. 6 Lines 20-30] with hinged portions [Mangla '847, 78] rotatably coupled to anchoring portions [Mangla '847, 80, Col. 6 Lines 58-60]. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the base wall to be a continuous wall encompassing the bottom of the container, and to have the base rim encompass an upper edge of the continuous wall, with the hinged portions of the handles coupled to the anchoring portions of the rim, as suggested by Mangla '847, in order to stabilize the container while carrying it by the handles [Mangla '847, Col. 6 Lines 60-63].

**9. Claim 70-76 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 6 of Mangla '847.**

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Regarding Claim 70, although the conflicting claims are not identical, they are not patentably distinct from each other because Mangla '847 discloses a continuous wall [Mangla '847, 22 and 24, Fig. 1] extending from the bottom [Mangla '847, 20] and encompassing said bottom, with a base rim [Mangla '847, 26] encompassing an upper edge of said continuous wall [Mangla '847, Fig. 3, Col. 6 Lines 20-30] with hinged portions [Mangla '847, 78] rotatably coupled to anchoring portions [Mangla '847, 80, Col. 6 Lines 58-60] with an outer flange defining a score [Mangla '847, 86, Col. 7 Lines 9-12] forming at least one handle segment, and said score extending into said middle flange portion [Mangla '847, Col. 7 Lines 9-12 and 19-22]. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the base wall to be a continuous wall encompassing the bottom of the container, and to have the outer flange defining a score forming at least one handle segment and to have said score extend into said middle flange portion, as suggested by Mangla '847, in order to stabilize the container while carrying it by the handles [Mangla '847, Col. 6 Lines 60-63], and to have the handles still integrally formed with the container [Mangla '847, Col. 7 Lines 19-22]. Claims 71-76 are rejected as being dependent upon rejected base claim 70.

**10. Claims 77-80 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 5 of Mangla '847.**

Regarding Claim 77, although the conflicting claims are not identical, they are not patentably distinct from each other because Mangla '847 discloses a continuous wall [Mangla '847, 22 and 24, Fig. 1] extending from the bottom [Mangla '847, 20] and

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encompassing said bottom, with a base rim [Mangla '847, 26] encompassing an upper edge of said continuous wall [Mangla '847, Fig. 3, Col. 6 Lines 20-30]. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the base wall to be a continuous wall encompassing the bottom of the container, and to have the base rim encompass an upper edge of the continuous wall, as suggested by Mangla '847, in order to stabilize the container while carrying it by the handles [Mangla '847, Col. 6 Lines 60-63]. Claims 78-80 are rejected as being dependent upon rejected base claim 77.

**11. Claims 81-84 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of Mangla '847.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because Mangla '847 discloses a continuous wall [Mangla '847, 22 and 24, Fig. 1] extending from the bottom [Mangla '847, 20] and encompassing said bottom, with a base rim [Mangla '847, 26] encompassing an upper edge of said continuous wall [Mangla '847, Fig. 3, Col. 6 Lines 20-30] with hinged portions [Mangla '847, 78] rotatably coupled to anchoring portions [Mangla '847, 80, Col. 6 Lines 58-60]. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the base wall to be a continuous wall encompassing the bottom of the container, and to have the base rim encompass an upper edge of the continuous wall, with the hinged portions of the handles coupled to the anchoring portions of the rim, as suggested by Mangla '847, in



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order to stabilize the container while carrying it by the handles [Mangla '847, Col. 6 Lines 60-63]. Claims 82-84 are rejected as being dependent upon rejected base claim 81.

**12. Claims 85-87 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 5 of Mangla '847.**

Regarding Claim 85, although the conflicting claims are not identical, they are not patentably distinct from each other because Mangla '847 discloses a continuous wall [Mangla '847, 22 and 24, Fig. 1] extending from the bottom [Mangla '847, 20] and encompassing said bottom, with a base rim [Mangla '847, 26] encompassing an upper edge of said continuous wall [Mangla '847, Fig. 3, Col. 6 Lines 20-30]. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the base wall to be a continuous wall encompassing the bottom of the container, and to have the base rim encompass an upper edge of the continuous wall, as suggested by Mangla '847, in order to stabilize the container while carrying it by the handles [Mangla '847, Col. 6 Lines 60-63]. Claims 86 and 87 are rejected as being dependent upon rejected base claim 85.

**13. Claims 88-90 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of Mangla '847.**

Regarding Claim 88, although the conflicting claims are not identical, they are not patentably distinct from each other because Mangla '847 discloses a continuous wall [Mangla '847, 22 and 24, Fig. 1] extending from the bottom [Mangla '847, 20] and

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encompassing said bottom, with a base rim [Mangla '847, 26] encompassing an upper edge of said continuous wall [Mangla '847, Fig. 3, Col. 6 Lines 20-30] with hinged portions [Mangla '847, 78] rotatably coupled to anchoring portions [Mangla '847, 80, Col. 6 Lines 58-60]. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the base wall to be a continuous wall encompassing the bottom of the container, and to have the base rim encompass an upper edge of the continuous wall, with the hinged portions of the handles coupled to the anchoring portions of the rim, as suggested by Mangla '847, in order to stabilize the container while carrying it by the handles [Mangla '847, Col. 6 Lines 60-63]. Claims 89 and 90 are rejected as being dependent upon rejected base claim 88.

**14. Claims 91-95 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of Mangla '847.**

Regarding Claim 91, although the conflicting claims are not identical, they are not patentably distinct from each other because Mangla '847 discloses a continuous wall [Mangla '847, 22 and 24, Fig. 1] extending from the bottom [Mangla '847, 20] and encompassing said bottom, with a base rim [Mangla '847, 26] encompassing an upper edge of said continuous wall [Mangla '847, Fig. 3, Col. 6 Lines 20-30] with hinged portions [Mangla '847, 78] rotatably coupled to anchoring portions [Mangla '847, 80, Col. 6 Lines 58-60], with a cover [Mangla '847, 16] including a top [Mangla '847, 136], a continuous cover wall [Mangla '847, 138 and 140, Fig. 1], and a cover rim [Mangla '847, 142], the cover wall extending downward from and encompassing the top [Mangla '847,

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Fig. 1], the cover rim encompassing a lower edge of the cover wall [Mangla '847, Fig. 7] and extending laterally outwardly therefrom, the cover rim adapted for matingly engaging the base rim [Mangla '847, Col. 11 Lines 3-16]. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the base wall to be a continuous wall encompassing the bottom of the container, and to have the base rim encompass an upper edge of the continuous wall, with the hinged portions of the handles coupled to the anchoring portions of the rim, and to have a cover with a bottom rim adapted to attach to the base rim of the container, as suggested by Mangla '847, in order to form the container portion of the container to store items therein [Mangla '847, Col. 11 Lines 9-16]. Claims 92-95 are rejected as being dependent upon rejected base claim 91.

**15. Claim 96 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 6 of Mangla '847.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because Mangla '847 discloses a continuous wall [Mangla '847, 22 and 24, Fig. 1] extending from the bottom [Mangla '847, 20] and encompassing said bottom, with a base rim [Mangla '847, 26] encompassing an upper edge of said continuous wall [Mangla '847, Fig. 3, Col. 6 Lines 20-30]. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the base wall to be a continuous wall encompassing the bottom of the container, and to have the base rim encompass an upper edge of the continuous

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wall, as suggested by Mangla '847, in order to stabilize the container while carrying it by the handles [Mangla '847, Col. 6 Lines 60-63].

***Allowable Subject Matter***

16. Claims 7-40 and 77-96 contain allowable subject matter. Claims 7, 70, 77, 81, 85, 88, 91, and 96 would be allowable if the following steps are taken:

- a. Claims 7 and 96 are rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, and
- b. A terminal disclaimer is filed to overcome the obviousness-type double patenting rejections of claims 7, 70, 77, 81, 85, 88, 91, and 96 set forth in this office action.

The following is an examiner's statement of reasons for allowable subject matter.

Regarding Amended Claim 7, the prior art discloses most of the claimed invention; however, the prior art does not expressly disclose each of said hinged portions having at least one upwardly extending rib segment extending upwardly from an upper surface of the associated hinged portion, at least one downwardly extending rib segment extending downwardly from a lower surface of the associated hinged portion.

Regarding Amended Claim 70, the prior art discloses most of the claimed invention; however, the prior art does not expressly disclose said elongated rib and said anchoring portion defining a middle flange portion therebetween and said score extending into said middle flange portion.

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Regarding Claim 77, the prior art discloses most of the claimed invention; however, the prior art does not expressly disclose at least one of the handles having at least one rib segment extending upwardly from an upper surface of the associated handle.

Regarding Claim 81, the prior art discloses most of the claimed invention; however, the prior art does not expressly disclose at least one of the handles having at least one rib segment extending downwardly from a lower surface of the associated handle.

Regarding Claim 85, the prior art discloses most of the claimed invention; however, the prior art does not expressly disclose at least one of the handles having a plurality of rib segments extending upwardly from an upper surface of the associated handle.

Regarding Claim 88, the prior art discloses most of the claimed invention; however, the prior art does not expressly disclose at least one of the handles having a plurality of rib segments extending downwardly from a lower surface of the associated handle.

Regarding Claim 91, the prior art discloses most of the claimed invention; however, the prior art does not expressly disclose at least one of the handles having at least one rib segment extending from a surface of the associated handle.

Regarding Claim 96, the prior art discloses most of the claimed invention; however, the prior art does not expressly disclose each of the hinged portions having at least one rib segment extending from a surface of the associated hinged portion.

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17. Claims 1-6 and 41-69 are allowed as presented by the applicant. The following is a statement of reasons for the indication of allowable subject matter:

Regarding Claim 1, the prior art discloses most of the claimed invention; however, the prior art does not expressly disclose said container having a ratio of the capacity for said volume of liquid to said interior surface area in the range of approximately  $2.8 \times 10^{-2}$  in. to  $3.8 \times 10^{-3}$  in.

Regarding Claim 41, the prior art discloses most of the claimed invention; however, the prior art does not expressly disclose said base rim having an upwardly protruding elongated rib with base venting notches intermittently interrupting said upwardly protruding rib.

Regarding Claim 56, the prior art discloses most of the claimed invention; however, the prior art does not expressly disclose a downwardly protruding rib with cover venting notches intermittently interrupting said downwardly protruding rib.

The closest prior art to the claimed invention are the following:

Olson (2,669,379),  
Lattuca (2,866,575),  
Lynn (3,119,541),  
Hildebrandt et al. (3,310,088),  
Kinn (3,623,633),  
Owen (3,737,069),  
Wilkins (3,889,732),  
Gall (4,357,042),  
Anderson (4,308,304),  
Daenen (4,412,630),  
Asmus (4,545,487),  
Hadtke (4,844,263),  
Chumley (5,161,710),  
Colucci et al. (5,165,947),  
Ostrum et al. (5,215,210), and  
Umiker (5,520,306).

***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: see PTO-892 Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/  
Examiner, Art Unit 3781

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781